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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2006-2199

12 KELLYE DORINDA AGUIRRE, ET. AL.
13 aka Kellye Dorinda Tolliver aka Cheree Fontae
Birden aka Fontae Birden Cheree
14 132 E 35th Street, Apt. #3
Los Angeles, CA 90011

A C C U S A T I O N

15 Vocational Nurse License No. VN 184979

16
17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about June 19, 1998, the Bureau of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 184979 to Kellye Dorinda
25 Aguirre, et. al. (Respondent). The Vocational Nurse License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on January 4, 2009, unless renewed.

27 / / /

28 JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Vocational Nursing and Psychiatric Technicians, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

5. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

6. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and

1 'registration.'"

2 7. Section 2875 of the Business and Professions Code (Code) provides, in
3 pertinent part, that the Board may discipline the holder of a vocational nurse license for any
4 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
5 Act.

6 8. Section 2878 of the Code states:

7 "The Board may suspend or revoke a license issued under this chapter [the
8 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

9 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

10 ...

11 (6) Failure to report the commission of any act prohibited by this section.

12 ...

13 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
14 abetting the violating of, or conspiring to violate any provision or term of this chapter.

15 "(e) Making or giving any false statement or information in connection with the
16 application for issuance of a license.

17 "(f) Conviction of a crime substantially related to the qualifications, functions,
18 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
19 conclusive evidence of the conviction.

20 ...

21 "(j) The commission of any act involving dishonesty, when that action is related
22 to the duties and functions of the licensee."

23 ...

24 9. Section 2878.6 of the Code states:

25 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
26 made to a charge substantially related to the qualifications, functions and duties of
27 a licensed vocational nurse is deemed to be a conviction within the meaning of
28 this article. The board may order the license suspended or revoked, or may

1 decline to issue a license, when the time for appeal has elapsed, or the judgment
2 of conviction has been affirmed on appeal or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order
4 under the provisions of Section 1203.4 of the Penal Code allowing such person to
5 withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the
6 verdict of guilty, or dismissing the accusation, information or indictment."

7 10. California Code of Regulations, title 16, section 2521, states:

8 "For the purposes of denial, suspension, or revocation of a license pursuant to
9 Division 1.5 (commencing with Section 475) of the Business and Professions
10 Code, a crime or act shall be considered to be substantially related to the
11 qualifications, functions or duties of a licensed vocational nurse if to a substantial
12 degree it evidences present or potential unfitness of a licensed vocational nurse to
13 perform the functions authorized by his license in a manner consistent with the
14 public health, safety, or welfare. Such crimes or acts shall include but not be
15 limited to those involving the following:"

16 . . .

17 11. Section 125.3 of the Code provides, in pertinent part, that the Director may
18 request the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of Substantially Related Crime)

23 12. Respondent is subject to disciplinary action under section 2878,
24 subdivision (a) and 490 of the Code, in conjunction with California Code of Regulations, title 16,
25 section 2521, in that Respondent has been convicted of a crime substantially related to the
26 qualifications, functions or duties of a licensed vocational nurse, as follows:

27 / / /

1 a. On or about July 7, 2005, Respondent was convicted on a guilty plea for
2 violating one count of Penal Code section 273.5, subdivision (a) (inflict corporal injury on
3 spouse), a felony, in the Superior Court of California, County of Los Angeles, Case No.
4 BA284931, entitled *The People of the State of California v. Kellye Dorinda Aguirre aka Kelly*
5 *Aguirre aka Kellye Dorinda Tolliver*.

6 b. The circumstances surrounding the conviction are that on or about June 7,
7 2005, Respondent was drinking alcohol with her cohabitant and they began arguing. Respondent
8 then obtained a steak knife and cut her cohabitant's arm and stabbed him in the chest. Monterey
9 Park Police Officers searched for Respondent who had fled her residence prior to their arrival.
10 The Respondent was apprehended and stated, "I know you are looking for me. I stabbed my
11 husband because I had enough."

12 SECOND CAUSE FOR DISCIPLINE

13 (Dishonest Acts)

14 13. Respondent is subject to disciplinary action under section 2878,
15 subdivisions (a) and (j), on the grounds of unprofessional conduct, in that Respondent failed to
16 disclose her conviction in 2005 for infliction of corporal injury on a spouse, as required, on her
17 2005 renewal application.

18 DISCIPLINE CONSIDERATIONS

19 14. To determine the degree of discipline, Complainant alleges that
20 Respondent has had disciplinary proceedings against her Vocational Nurse License No. 184979,
21 and prior convictions, as follows:

22 a. Unlicensed Driver

23 On or about December 17, 1997, Respondent self-reported a 1995 conviction for
24 driving without a license, driving without a seat belt, and driving with a passenger with an open
25 container on her Application for Vocational Nurse Licensure. Respondent indicated that a
26 \$1,600.00 warrant was issued against her, she was imprisoned, and she was sentenced to thirty-
27 six months of summary probation in Los Angeles Municipal Traffic Court. The Bureau reviewed
28 Respondent's conviction and approved her vocational nurse license application for issuance.

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